

2. By letter dated September 3, 2009, EPA requested the District Engineer for the Corps' Huntington District to exercise his discretionary authority under 33 C.F.R. § 325.7 to suspend, revoke or modify the permit. In the letter, EPA asserted that new information and circumstances had arisen since the issuance of the permit in January, 2007 which justified reconsideration of the permit decision.

3. On September 4, 2009, the United States moved this Court to stay the proceedings regarding the Spruce No. 1 permit in order to provide the Corps an opportunity to determine whether the information provided by EPA warranted the exercise of its discretionary authority to suspend, modify or revoke the permit. Doc. No. 459. By Order dated September 15, 2009, this Court granted the United States' motion. Doc. No. 461.

4. By letter dated September, 30, 2009, the District Engineer for the Huntington District of the Corps responded to EPA's request, and advised that he had determined not to exercise his discretionary authority to suspend or modify or revoke the Spruce No. 1 permit.

5. On October 5, 2009, the United States moved this Court to extend the stay of proceedings regarding the Spruce No. 1 permit for an additional thirty days in order to provide EPA an opportunity to consider whether to exercise its authority under CWA § 404(c) to prohibit discharges into waters of the United States as authorized by the Spruce No. 1 permit. Doc. No. 463. By Order dated October 21, 2009, this Court granted the United States' motion. Doc. No. 466.

6. By letter dated October 16, 2009, EPA formally initiated the administrative process to exercise its Section 404(c) authority by notifying the Corps that, pursuant to 40 C.F.R. § 231.3(a), it intended to issue a public notice of a proposed determination to restrict or prohibit the discharge of dredged or fill material at the Spruce No. 1 Mine project site consistent with

[EPA's] authority under Section 404(c) of the Clean Water Act" In accordance with EPA regulations, 40 C.F.R. § 231.3(a)(2), that letter initiated a 15 day period for the recipients of the letter to demonstrate that no unacceptable adverse effects will occur, or that corrective action will be taken to prevent unacceptable adverse effects.

7. On October 30, 2009, EPA and the Corps and Mingo Logan met to discuss options for further reducing adverse environmental impacts associated with the Spruce No. 1 permit. As a result of that meeting, EPA and Mingo Logan agreed to continue their discussions regarding EPA's concerns. EPA has granted a 15 day extension of the period described in 40 C.F.R. § 231.3(a)(2) for Mingo Logan to provide additional information pertinent to EPA's evaluation of the Spruce No. 1 permit. A copy of that letter is attached.

8. In order to allow for the consultations to continue for an additional 15 days, and to afford a reasonable period after the conclusion of those consultations for EPA to determine whether corrective action is appropriate or whether to issue public notice in accordance with the Clean Water Act Section 404(c) process, the United States requests that the stay of proceedings in this Court be extended for an additional 30 days, until December 4, 2009.

Both the Plaintiffs and the Intervenor Mingo Logan Coal Company concur in this request.

Dated November 4, 2009

Respectfully submitted,

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